

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WALTER SOBERA, WILLIE B. OWENS, ) Case No. 14-cv-00979-SC  
ABDIWELI JEYDHE, CANDIS DOERING, )  
JAMES HOPKINS, and GREGORY ) ORDER GRANTING DEFENDANT'S  
GLYNN, ) MOTION TO STAY  
Plaintiffs, )  
v. )  
DEPUY ORTHOPAEDICS, INC.; )  
JOHNSON & JOHNSON SERVICES, )  
INC.; JOHNSON & JOHNSON, INC.; )  
THOMAS P. SCHMALZRIED, M.D.; and )  
DOES 1 through 20, inclusive, )  
Defendants. )

**I. INTRODUCTION**

Now before the Court are Plaintiffs' motion to remand to the Superior Court of California and Defendants DePuy Orthopaedics, Inc.; Johnson & Johnson Services, Inc.; and Johnson & Johnson's (collectively "Defendants") motion to stay these proceedings. Both motions are fully briefed,<sup>1</sup> and both are suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b). For the

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<sup>1</sup> ECF Nos. 10 ("Pls.' Mot."), 12 ("Opp. to Pls.' Mot."), 11 ("Defs. Mot."), 13 ("Opp. to Defs.' Mot."), 14 ("Defs.' Reply").

1 reasons set out below, the Court GRANTS Defendants' motion and  
2 STAYS this case, including its consideration of Plaintiffs' motion  
3 to remand.

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5 **II. BACKGROUND**

6 On January 30, 2014, Plaintiffs filed this action in the  
7 Superior Court of California for the County of San Francisco.  
8 Plaintiffs alleged that Defendants manufactured, promoted, and/or  
9 sold the DePuy Pinnacle Acetabular Cup System ("Pinnacle System"),  
10 a device used in hip replacement surgery, which Plaintiffs claim  
11 was defective. ECF No. 1 at 43-48. On March 3, Defendants removed  
12 the case, invoking federal diversity jurisdiction under 28 U.S.C. §  
13 1332 and claiming that Defendant Thomas P. Schmalzried, M.D.  
14 ("Schmalzried") had been fraudulently joined. ECF No. 1.  
15 Plaintiffs sought remand, arguing that Schmalzried was properly  
16 joined and that its California citizenship precluded diversity  
17 jurisdiction. Pls.' Mot. at 2.

18 In May of 2011, the Judicial Panel on Multidistrict Litigation  
19 ("JPML") established MDL No. 2244 to handle cases sharing "factual  
20 questions as to whether DePuy's Pinnacle Acetabular Cup  
21 System . . . was defectively designed and/or manufactured, and  
22 whether Defendants failed to provide adequate warnings concerning  
23 the device." In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant  
24 Prods. Liab. Litig., 787 F. Supp. 2d 1358, 1360 (J.P.M.L. 2011).  
25 Defendants requested that the JPML transfer this case to MDL 2244  
26 and that this Court stay all proceedings pending the JPML's  
27 decision. On March 25, 2014, the JPML issued a conditional  
28 transfer order identifying this case as one involving questions of

1 fact common to the other actions previously transferred to MDL  
2 2244. Conditional Transfer Order (CTO-171) at 1-2, In re De Puy  
3 Orthopaedics, Inc., Pinnacle Hip Implant Prods. Liab. Litig., No.  
4 14-00348, MDL No. 2244 (J.P.M.L. 2014); ECF No. 1 ("CTO-171").  
5 Plaintiffs have opposed the transfer.

### 6 7 **III. LEGAL STANDARD**

8 The authority to stay proceedings "is incidental to the power  
9 inherent in every court to control the disposition of the causes on  
10 its docket . . . ." Landis v. North American Co., 299 U.S. 248,  
11 254 (1936). A conditional transfer order does not require that the  
12 transferor court stay proceedings or limit its jurisdiction.  
13 J.P.M.L. Rule 2.1(d). Rather, the decision to grant a stay is  
14 within the district court's discretion. See In re iPhone App.  
15 Litig., No. 10-CV-5878-LHK, 2011 WL 2149102, at \*2 (N.D. Cal. May  
16 31, 2011); Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D.  
17 Cal. 1997). When considering a stay pending transfer to MDL,  
18 courts consider three factors: (1) conserving judicial resources  
19 and avoiding duplicative litigation; (2) hardship to the moving  
20 party if the action is not stayed; and (3) potential prejudice to  
21 the nonmoving party. See, e.g., Lingle v. DePuy Orthopaedics,  
22 Inc., No. 11cv1486, 2011 WL 5600539, at \*1 (S.D. Cal. Nov. 17,  
23 2011); Rivers, 980 F. Supp. at 1360.

### 24 25 **IV. DISCUSSION**

#### 26 **A. Judicial Economy and Duplicative Litigation**

27 This first factor primarily concerns preventing this Court  
28 from "needlessly expend[ing] its energies familiarizing itself with

1 the intricacies of a case that would be heard by another judge" and  
2 avoiding replication of case management by the MDL judge. Rivers,  
3 980 F. Supp. at 1360-61. When deciding whether to grant a stay  
4 prior to ruling on a motion to remand, "courts consider whether the  
5 motion raises issues likely to arise in other actions pending in  
6 the MDL transferee court." Conroy v. Fresh Del Monte Produce,  
7 Inc., 325 F. Supp. 2d 1049, 1053 (N.D. Cal. 2004). Courts that  
8 have denied a stay and ruled on motions to remand have found that  
9 the issues involved in the remand motion were unlikely to arise in  
10 any other cases before the MDL. See, e.g., Lopez v. Pfeffer, No.  
11 13-cv-03341 NC, 2013 WL 5367723, at \*3 (N.D. Cal. Sept. 25, 2013);  
12 Marble v. Organon USA, Inc., No. C 12-02213 WHA, 2012 WL 2237271,  
13 at \*3 (N.D. Cal. June 15, 2012).

14 The Court finds that the interests of judicial economy favor  
15 staying this action and allowing the MDL to resolve the motion to  
16 remand. Judicial efficiency is served generally through  
17 consolidation in the MDL. All of the (more than one thousand)  
18 products liability cases involving the Pinnacle System can be heard  
19 by a single judge who is familiar with the facts. See CTO-171, at  
20 1. More specifically, a number of other cases involving the issue  
21 of Schmalzried's fraudulent joinder have already been stayed by the  
22 district courts hearing them and referred to the MDL. See, e.g.,  
23 Blalock v. DePuy Orthopaedics, Inc., No. C 11-04746 SBA, 2011 WL  
24 6217540, at \*2 (N.D. Cal. Dec. 14, 2011); Lingle, 2011 WL 5600539  
25 at \*1-\*2; Earl v. DePuy Orthopaedics, Inc., No. 2:11-cv-07831-JHN-  
26 MRW, 2011 WL 7092288 (C.D. Cal. Nov. 15, 2011); Freisthler v. DePuy  
27 Orthopaedics, Inc., No. CV 11-6580 DSF, 2011 WL 4469532, at \*2  
28 (C.D. Cal. Sept. 21, 2011). Staying this action will allow the MDL

1 to resolve the issue of Schmalzried's fraudulent joinder in all of  
2 these cases efficiently and consistently.

3 In opposing the motion to stay, Plaintiffs rely almost  
4 exclusively upon Shelton v. DePuy Orthopaedics, Inc., another  
5 products liability case involving the Pinnacle System in which  
6 Schmalzried was joined. In that case, Judge Dean Pregerson denied  
7 a motion to stay pending transfer to the MDL, held that Schmalzried  
8 had not been fraudulently joined, and remanded the matter to state  
9 court. No. CV 11-08082 DDP, 2011 WL 6001630 (C.D. Cal. Dec. 1,  
10 2011); see also Opp. to Defs.' Mot. at 2, 6. Shelton recognized  
11 that district courts have divided on this issue, sometimes granting  
12 stays and sometimes ruling on motions to remand. Id. at \*1.

13 Shelton also applied a test developed in the Eastern District  
14 of Wisconsin, which suggests that a court should consider a motion  
15 to stay prior to a motion to remand "only if the jurisdictional  
16 issue is both difficult and similar or identical to those cases  
17 transferred or likely to be transferred [to the MDL]." Id.  
18 (quoting Meyers v. Bayer AG, 143 F. Supp. 2d 1044, 1049 (E.D. Wis.  
19 2001). However, this Court has never adopted that test, and, as  
20 evidenced by the numerous contrary cases cited above, adoption of  
21 the Myers test is hardly widespread. See also Grove v. Organon  
22 USA, Inc., No. 13-2138 SC, 2013 WL 3286225, at \*1 (N.D. Cal. June  
23 27, 2013) ("It is obvious to the Court that it can consider a  
24 motion to stay before a motion to remand . . . ."). Courts in  
25 this district have regularly considered motions to stay before  
26 motions to remand.

27 Even were this Court to adopt the Myers test, an important  
28 distinction from Shelton renders Shelton inapposite. As Defendants

1 point out, Shelton was decided solely on the basis of California  
2 law. Shelton, 2011 WL 6001630, at \*3 ("Defendants argue that there  
3 is no possibility Plaintiff can prevail on any of her claims  
4 against Dr. Schmalzried under California law."). Here, Plaintiffs  
5 and Defendants disagree as to which law applies to the question of  
6 Schmalzried's potential liability. See Pls.' Mot., at 10 ("it is  
7 evident that California law applies to this action"); Opp. to Pls.'  
8 Mot., at 15 ("plaintiffs are wrong that California law governs").  
9 If this Court were to evaluate the complexity of the jurisdictional  
10 issue before it, as required by the Myers test, the additional  
11 complexity in this remand motion would likely render transfer to  
12 the MDL appropriate.

13       Allowing the MDL to decide the fraudulent joinder issue avoids  
14 unnecessary duplicative litigation across several federal  
15 districts. It also eliminates the risk of inconsistent rulings,  
16 either among the district courts, between the district courts and  
17 the MDL, or both.

18       **B. Hardship to the Moving Party**

19       The Court finds that denying the motion to stay would impose  
20 hardship upon Defendants. Primarily, it would force Defendants to  
21 "litigate the same complex issues in this Court that will likely be  
22 later litigated in the MDL court." Defs.' Mot., at 7. This factor,  
23 too, favors granting a stay.

24       **C. Prejudice to Non-Moving Party**

25       Plaintiffs do not directly assert any prejudice inflicted by  
26 the stay, though they do argue that Defendants' motion is "only  
27 meant to delay." Opp. to Defs.' Mot., at 7. Any delay is likely  
28 to be short, as the JPML is already considering whether to transfer

1 the case. Moreover, the efficiency and expertise gained through  
2 having a single judge hear the motion to remand alongside others  
3 like it likely outweigh any prejudice. See Grove, 2013 WL 3286225,  
4 at \*1.

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6 **V. CONCLUSION**

7 For the foregoing reasons, the Court GRANTS Defendants' motion  
8 and STAYS the proceedings in this case, including consideration of  
9 Plaintiffs' motion to remand, pending the JPML's decision on  
10 transferring the case.

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12 IT IS SO ORDERED.

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15 UNITED STATES DISTRICT JUDGE  
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